



DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
ENFORCEMENT DIVISION
DIRECTIVE

DIRECTIVE
NUMBER
227

DISTRIBUTION
DATE
October 1, 1998

1. **SUBJECT: COMPLAINTS TAKEN AFTER THE EXPIRATION OF THE STATUTORY TIME LIMIT**
2. **PURPOSE:** To set forth the procedures for the acceptance of complaints where the one (1) year statutory time period has elapsed, but it has been determined that the Department used an improper standard in evaluating a complaint or, because of equitable tolling considerations, a complaint should be taken.
3. **BACKGROUND:** The Fair Employment and Housing Act (FEHA) section 12960 provides that, "No complaint may be filed after the expiration of one year from the date upon which the alleged unlawful practice... occurred...." However, under ***limited circumstances***, the one year time limit for filing complaints may be extended. This section also provides that the one year time limit for filing may be extended by ninety (90) days if the person allegedly aggrieved first obtained knowledge of the facts after the expiration of one year. (Refer to the Jurisdiction section of the Case Analysis Manual for further guidance.)

The Fair Employment and Housing Commission (FEHC), in DFEH v. Louis Cairo, Billie Jean Baker, and Clyde Baker, dba Louis Cairo's Restaurant (1984) FEHC Decision No. 84-04, has also determined that the one year time limit for filing a complaint may be tolled in cases where the Department misleads the complainant about filing obligations, commits errors in processing the complaint, or improperly discourages or prevents the complainant from filing at all.

4. **PROCEDURES:**

A. **Intake:**

- 1) All decisions to accept a complaint which is beyond the one year statute of limitations ***must have the approval*** of the District Administrator.

- 2) Where it appears that a complaint meets the standards for acceptance after the expiration of the one year statute of limitations, the complaint will be drafted *in the usual manner*. Language regarding the Department's jurisdiction over the matter will **NOT** be used in the body of the complaint.
- 3) The Consultant will make a note to the file regarding the reasons the decision was made to take the complaint after the expiration of the one year statute of limitations. These notes will be marked "Confidential" and placed under the "Confidential" tab in the case file.
- 4) This procedure **DOES NOT** relieve District Office staff of responsibility for processing intake related paperwork in a proper and timely manner. District Office staff are responsible for ensuring that correct intake decisions are being made, accurate records are maintained, and that complaints are timely processed.

B. Processing:

The case will be served and investigated in the normal manner unless there is a need to assign priority status.

5. APPROVAL

Nancy C. Gutierrez, Director

Date